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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5392
DATE COMPLAINT FILED: October 23, 2003¹
DATE OF NOTIFICATION: October 30, 2003
DATE ACTIVATED: November 17, 2003

EXPIRATION OF SOL: September 19, 2008

COMPLAINANTS: Michael Reid Davis, Jason Robert Cole, Annette Stewart

RESPONDENTS: General Wesley K. Clark
Clark for President and Dorian Vanessa Weaver, as treasurer
The Richard C. Levitt Family Lecture Endowment Fund
The University of Iowa Foundation
The University of Iowa
The University of Iowa College of Law

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 110.12(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ Complainants filed a notarized complaint on October 8, 2003, but it lacked a sworn statement as required by 2 U.S.C. § 437g(a)(1). Complainants were notified of the problem by letter dated October 16 and re-filed on October 23.

I. INTRODUCTION

This matter originated with a complaint filed by three University of Iowa law students on October 23, 2003. The complaint alleges that General Wesley K. Clark, a former candidate for the Democratic nomination for President of the United States in 2004, the University of Iowa ("the University"), the University of Iowa Foundation ("the University Foundation"), the University of Iowa College of Law ("the Law School") and the Richard C. Levitt Family Lecture Endowment Fund ("the Endowment")² violated the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA") in connection with a public lecture given by General Clark on the University's campus on September 19, 2003, two days after he announced his candidacy. The specific allegations contained in the complaint are (1) that by "knowingly and willfully" attending a campaign-related event off-campus before his lecture and by criticizing President Bush's military policies during his lecture, including the decision to go to war in Iraq, the character of General Clark's appearance at the University changed from an academic discussion to one that was for the purpose of influencing a Federal election; and (2) that by accepting payment from the University for this lecture, General Clark received, and the University respondents made, a contribution prohibited by the Act.

As more fully set forth below, it does not appear that General Clark or the University respondents violated the Act because the Law School made reasonable efforts to maintain an academic environment before, during and after General Clark's speech. *See* 11 C.F.R. § 110.12(b). Moreover, the campaign-related events that took place off-campus do not appear to have involved the University respondents in any manner.

² When discussed collectively herein, the University, the University Foundation, the Law School, and the Endowment will be referred to as "the University respondents."

1 **II. FACTUAL AND LEGAL ANALYSIS**

2
3 **A. Facts**

4 **1. The Parties**

5 **i. General Clark**

6 General Clark entered the U.S. Military Academy at West Point in 1962 and retired from
7 the military in 2000 as a four-star Army General. In his most recent military role, he led NATO's
8 effort in Kosovo as the Supreme Allied NATO Commander. Since retiring, he has authored a
9 book, provided military analysis for CNN, served on various corporate boards and worked for an
10 investment-banking firm. Prior to announcing his candidacy, he also had been a fairly frequent
11 paid speaker through his affiliation with Greater Talent Network ("GTN"). He has never held an
12 elected office.

13 Clark for President ("the Committee") was the principal campaign committee supporting
14 the nomination and election of General Clark. On February 11, 2004, General Clark withdrew
15 from the 2004 Presidential race.

16 **ii. The University Respondents**

17 The University of Iowa and the Law School, a division of the University, are
18 unincorporated, nonprofit, charter agencies of the State of Iowa. The University of Iowa
19 Foundation is a nonprofit, tax-exempt Iowa corporation that handles the University's fundraising
20 and gift management activities. The Iowa Law School Foundation³ is an independent, nonprofit
21 and tax-exempt Iowa corporation that handles fundraising activities for the Law School. The
22 Levitt Lecture Endowment Fund, a non-legal entity, was established in 1995 with a \$3 million

³ The complainants did not name the Iowa Law School Foundation as a respondent.

1 gift by a law school alumnus to provide funds to bring national and world leaders to the campus.
2 See University of Iowa Foundation Response, at 2; University of Iowa and Iowa College of Law
3 Response ("Law School Response"), Attachment 5.

4 While the University Foundation is the custodian for the Endowment, the Law School
5 Foundation Board of Directors approves expenditures from the Endowment, and the Law School
6 Dean, N. William Hines, who is on the Board, has sole authority to direct the University
7 Foundation to disburse the funds. Dean Hines handled all the arrangements for General Clark's
8 appearance at the Law School, including selecting him as speaker, signing the contract with
9 General Clark's agent, and setting up General Clark's schedule for the day of the lecture. See
10 Law School Response, at 2.

11 2. The Law School Invites General Clark to Give the Levitt Lecture

12 In early 2003, Dean Hines began to search for a speaker for the Law School's annual
13 Richard S. Levitt Distinguished Lecture ("the Levitt Lecture"). See Law School Response, at 2.
14 Past speakers have included U.S. Supreme Court Justice John Paul Stevens, former U.S.
15 Attorneys General Richard Thornburg and Janet Reno, and several Nobel Peace Prize winners
16 and Pulitzer Prize-winning authors. See *id.* It appears that the timing of the Levitt Lecture varies
17 from year to year. See *id.*, Attachment 5. In 2003, Dean Hines scheduled the lecture to coincide
18 with the Law School's Iowa Supreme Court Day on September 20, 2003. See *id.*, at 2.

19 In late winter/early spring 2003, General Clark came to Dean Hines' attention as a
20 potential Levitt Lecturer because General Clark frequently appeared in the media as an expert to
21 comment on the war in Iraq. See *id.* In March 2003, Dean Hines contacted Greater Talent
22 Network, Inc. ("GTN"), a speakers' booking agency, to inquire about General Clark's availability

1 to give the Levitt Lecture. *See id.* GTN confirmed General Clark's availability for September
2 19, and the parties orally agreed to that date.⁴ *See id.*, and Attachment 3. Although there were
3 reports in the media speculating that General Clark would enter the 2004 presidential race as a
4 Democrat, Dean Hines maintains that he was unaware of the speculation surrounding General
5 Clark's potential candidacy at the time the parties reached an oral agreement.⁵ *See* Law School
6 Response, at 3. Dean Hines acknowledges, however, that by the time the contract was signed on
7 April 23, 2003, he had heard the rumors. *See id.*, at 3. According to Dean Hines, GTN
8 discounted the rumors at that time as idle speculation. *Id.*

9 Pursuant to the terms of the written contract, the Law School agreed to pay \$30,000 to
10 GTN for General Clark's appearance and, in addition, first-class roundtrip airfare for two, hotel,
11 meals and ground transportation. *See id.*, at 2-3, and Attachment 1. The contract also provided
12 that \$15,000 was due upon signing and \$15,000 within 24 hours of performance.⁶ *See id.*,
13 Attachment 1.
14

⁴ In January 2003, GTN sent Dean Hines a brochure containing information about the speakers it represents. The brochure offered the following description of General Clark: "The first U.S. Supreme Allied Commander of NATO, General Clark led a unified force of 19 nations to success in the controversial Kosovo conflict without a single allied casualty. After a career that included powerful positions in Washington, Latin America and Europe, General Clark retired as one of the most decorated officers since General Eisenhower. He offers a singularly informed and dynamic view of leadership based on honor, conviction and action."

⁵ The "Draft Clark" movement appears to have begun sometime in the fall of 2002 at or about the time President Bush received authority to launch a war against Iraq. *U.S. News & World Report*, Oct. 28, 2002. The war began on March 21, 2003. Shortly after President Bush declared an end to major combat operations on May 1, 2003, General Clark stopped appearing on CNN as a military analyst. Moreover, two primary "Draft Clark" organizations emerged in the spring of 2003: "DraftClark2004.com" registered its domain name on May 1, 2003, and registered with the Commission on June 17. "DraftWesleyClark.com" registered its domain name on April 2, 2003, and registered with the Commission on July 18.

⁶ According to Dean Hines, he directed the University of Iowa Foundation to send GTN a \$15,000 check at the time the contract was signed and a second \$15,000 check 30 days before General Clark's speech. *See* Law School Response, at 2.

1 3. **Increasing Media Speculation Concerning General Clark's Possible**
2 **Candidacy**
3

4 In early August 2003, the Law School sent out 800 invitations to the lecture and made
5 arrangements for a post-lecture private dinner for 150 guests. *See id.*, at 3. In his response to the
6 complaint on behalf of the Law School, Dean Hines explains that, throughout the summer, while
7 continuing to hear rumors about the General Clark candidacy, many pundits and commentators
8 doubted General Clark would enter the race so late and with so little financial backing. *See id.*
9 Toward the end of August, however, General Clark's entrance into the presidential race appeared
10 imminent, and Dean Hines began to worry that General Clark would use the Levitt Lecture as a
11 forum to announce his candidacy or as a campaign event.⁷ *See id.* In response, Dean Hines
12 contacted GTN to receive assurances that General Clark would not "co-opt" the lecture for
13 political purposes, that the lecture would be appropriate for an academic setting and that General
14 Clark would come to campus only to have lunch with law school faculty, give the lecture, and
15 attend a private dinner.⁸ *See id.* GTN reportedly assured the Dean that General Clark understood
16 that any political use of the lecture would not be appropriate. *See id.*

17 Although Dean Hines claims that none of the publicity materials for the lecture
18 mentioned General Clark's possible candidacy, a news release issued by the University's News
19 Service on August 19, 2003, identified General Clark as a "possible presidential candidate." *See*

⁷ While General Clark acknowledged as early as February 17, 2003 on "Meet the Press" that he had thought about a presidential run, publicly available information does not indicate when he began testing the waters for a possible entry into the Democratic race. At the latest, by August 26, 2003, Clark indicated that he was giving serious thought to entering the race and stated that he soon would be giving an announcement about his intentions. *See* Beaumont Thomas, *Clark to decide candidacy before Iowa visit*, Des Moines Register, Aug. 27, 2003, at A1 ("I'm going to have something to say soon. I expect to have my decision made by September 19th.").

⁸ The contract between the law school and GTN provided only that General Clark would give the Levitt Lecture at 4 p.m. September 19, 2003. It appears that the parties orally agreed to the faculty lunch and the private dinner.

1 *Clark, Ogletree Highlight Law School Guest Speakers This Fall*, University of Iowa News
2 Service, Aug. 19, 2003. A follow-up news release issued by the University on September 8,
3 2003, stated: "In addition, General Clark is considering seeking the Democratic Party's
4 presidential nomination, although he is expected to make that announcement before he comes to
5 the university." *See Wesley Clark To Discuss Foreign Relations In Levitt Lecture at UI*,
6 University of Iowa News Service, Sept. 8, 2003. Finally, the University issued a news release on
7 September 10, 2003, announcing that General Clark would hold a customary press conference
8 before delivering the Levitt Lecture "whether General Clark has declared his candidacy or not."
9 *See MEDIA ADVISORY: Press Conference Scheduled for Wesley Clark Visit*, University of Iowa
10 News Service, Sept. 10, 2003.

11 4. General Clark Announces his Candidacy for President

12 On September 17, 2003, General Clark announced his entry into the 2004 presidential
13 race.⁹ The same day, the University issued two news releases: one cancelled the customary pre-
14 Levitt Lecture press conference and the second announced procedures for lecture attendees,
15 including prohibiting signs in the lecture hall and the distribution of pamphlets in the building.
16 *See MEDIA ADVISORY: Clark Press Conference Cancelled and Procedures Announced For*
17 *Those Attending Clark Lecture*, University of Iowa News Service, Sept. 17, 2003.

18
19
20

⁹ On October 2, 2003, General Clark filed his campaign committee's statement of organization. On December 2, 2003, he became eligible for federal matching funds.

5. General Clark Arrives in Iowa for the Levitt Lecture and Meets Campaign Supporters and the Media

On September 19, 2003, at 9:30 a.m., General Clark arrived in Iowa City by private plane.¹⁰ See Law School Response, at 3. Immediately upon arrival, General Clark met campaign supporters and members of the local and national media and was taken to the Hamburg Inn, an off-campus diner and frequent campaign stop for presidential candidates in Iowa. See *id.* According to press reports, about fifty to one hundred Clark supporters were present.¹¹ General Clark ate breakfast, gave a short speech, answered questions and walked around the diner.¹² He then walked with his supporters to his hotel on the University of Iowa campus. See Law School Response, at 3-4.

By prior agreement, Dean Hines met General Clark at his hotel at 11:45 a.m. See *id.*, at 4. This was their first meeting. See *id.*, at 3. Dean Hines asserts he was unaware of General Clark's earlier morning activities, which the Dean claims were not connected to the Levitt Lecture later that afternoon. See *id.*, at 3-4. Nevertheless, Dean Hines reportedly expressed concern to General Clark that the lecture and campus visit must not turn into a campaign event. See *id.*, at 4. According to the Dean, "General Clark was keenly aware of the sensitivity of our position. If he promoted his presidential aspirations at all during lecture events, it would appear we were

¹⁰ Because complainants believe that the Law School paid for General Clark's travel expenses, they do not question whether he reimbursed the owner of the airplane on which he flew to Iowa City. The Committee stated that the campaign paid for the trip, and an expenditure of \$53,146 for charter air service around the time of the Iowa trip appears in the Committee's disclosures.

¹¹ Jodi Wilgoren, *Clark Explains Statement on Authorization for Iraq War*, N.Y. Times, Sept. 20, 2003, at A9 (50 supporters); Kristen Schorsch, *Clark opens Iowa campaign - New Hopeful going to try to 'put lightning in a bottle,'* Iowa City Press-Citizen, Sept. 20, 2003 (100 supporters).

¹² Jodi Wilgoren, *Clark Explains Statement on Authorization for Iraq War*, N.Y. Times, Sept. 20, 2003, at A9.

1 favoring one of ten Democratic presidential contenders with a unique Iowa forum not available to
2 others." *Id.*

3 From the hotel, Dean Hines escorted General Clark to campus where they had lunch with
4 some of the law school faculty. *See id.* After lunch, Dean Hines drove General Clark back to the
5 hotel where, according to press reports, he conducted a few press interviews from his hotel
6 room.¹³ *See id.*

7 **6. General Clark Gives the Levitt Lecture at the University**

8 At approximately 3:45 p.m., Dean Hines returned to the hotel to escort General Clark to
9 the lecture, which was scheduled to begin at 4:00 p.m. *See id.* According to Dean Hines, more
10 than 1,200 people attended the public speech, including about one hundred "obvious" General
11 Clark supporters. *See id.* At the time he introduced General Clark, Dean Hines reportedly
12 advised the audience that "political activities such as banner waving, chanting, etc., were not
13 acceptable." *Id.* Dean Hines maintains that the audience followed his instructions. *See id.*

14 According to the complainants, the speech and General Clark's responses to the audience
15 questions afterward were of a "political tone." *See* Complaint, at 3. "General Clark spoke
16 glowingly as he discussed foreign policy during his tenure as a general. He then focused on what
17 he perceived to be negative aspects of the foreign policy decisions made by President George W.
18 Bush. ... Throughout the 30-minute question-and-answer session ... General Clark referenced
19 the Bush Administration's alleged domestic policy failures, such as tax cuts, budget deficits,
20 education, the environment, and job losses." *Id.*

¹³ *See, e.g., id.*; John Mercurio, *Clark embarks, Gore implores*, CNN.com, Sept. 19, 2003; Paul Barton, *Leverage, not war, 'vote' aim, Clark says*, Ark. Democrat-Gazette, Sept. 20, 2003, at A1.

1 According to Dean Hines, General Clark chose his speech topic, "The American
2 Leadership Role in a Changing World," sometime in advance.¹⁴ See Law School Response, at 4.
3 The Dean noted that General Clark had given the same speech on previous occasions and spoke
4 at the Levitt Lecture for about fifty minutes without the use of notes.¹⁵ See *id.*, at 4-5. Dean
5 Hines further noted that, "so far as [he] could tell, the criticisms General Clark made of past and
6 current U.S. policy were the same ones he made in his books, articles, CNN comments and in
7 other talks since his retirement from the military." *Id.*, at 4.

8 News accounts about General Clark's day in Iowa City generally noted that in his speech,
9 General Clark spoke about his military and NATO experiences and that he criticized President
10 Bush's foreign policy decisions, especially concerning Iraq.¹⁶ Most news accounts did not state
11 one way or another whether the speech was campaign-like.¹⁷ One account stated, however, that
12 General Clark "stayed clear of campaign rhetoric during the hour-long speech. He addressed the
13 country's war on terrorism and said America needs to have better international communication,
14 citing examples that people's impressions of America have declined."¹⁸ According to the news

¹⁴ None of the respondents submitted a transcript of the speech, and this Office could not locate a copy.

¹⁵ Based on information obtained from the www.clark04.com website, General Clark continued to give speeches about foreign policy during his candidacy, but he began to speak more often about domestic issues, including a tax cut proposal, a jobs creation program, the economy, AIDS, healthcare, the environment, higher education and voting rights. Other 2004 presidential candidates gave speeches at colleges and universities: Howard Dean, University of Iowa (November 2003) and Grand View College (Iowa) (November 2003); John Kerry, Boston College (December 2003) and Stanford University (December 2003).

¹⁶ See, e.g., Paul Barton, *Leverage, not war, 'vote' aim, Clark says*, Ark. Democrat-Gazette, Sept. 20, 2003, p. 1; Thomas Beaumont, *Clark says he wouldn't have voted for war*, Des Moines Reg., Sept. 20, 2003, at A1; Jay Root, *Clark clarifies remark that he would have voted for Iraq war*, Knight Ridder/Tribune New Service, Sept. 20, 2003; Jodi Wilgoren, *Clark Explains Statement on Authorization for Iraq War*, N.Y. Times, Sept. 20, 2003, at A9.

¹⁷ See *id.*

¹⁸ Kristen Schorsch, *Clark opens Iowa campaign - New hopeful going to try to put 'lightning in a bottle,'* Iowa City Press-Citizen, Sept. 20, 2003.

1 accounts, General Clark sounded more like a candidate during interviews in his hotel before the
2 Levitt Lecture and at his morning appearance at the Hamburg Inn.¹⁹

3 After his speech, General Clark participated in a question-and-answer session with the
4 audience. Law School Response, at 4. Dean Hines reportedly asked audience members to
5 submit written questions, which he pre-screened to exclude any questions related to General
6 Clark's candidacy. *See id.*

7 After the question-and-answer session, General Clark attended a private reception and
8 dinner with 150 guests. *See id.*, at 5. He reportedly gave brief remarks on the importance of a
9 liberal education in preparing military leaders and answered a few questions. *See id.* According
10 to Dean Hines, "Again, the theme of his remarks dwelt on his past leadership experience in the
11 military, not his future plans in the political arena." *Id.* Dean Hines then escorted General Clark
12 to a waiting car, which took General Clark to the airport. *See id.* General Clark left Iowa City at
13 9:30 p.m. *See id.*

14 **7. General Clark Declines Payment for Levitt Lecture**

15 Shortly after the Iowa speech, General Clark gave paid speeches at DePauw University in
16 Indiana and at Midwestern State University in Texas.²⁰ According to news accounts, General
17 Clark's subsequent speeches began to take on a more presidential campaign tone, particularly at

¹⁹ *See, e.g., id.* ("I'm here because I want your help. I want your help to get to the White House."). *See also Clark: 'I Would Never' Have Backed War*, *Newsday*, Sept. 20, 2003, at A8 ("I would have never voted for war, Clark told Reuters before delivering a foreign policy speech at the University of Iowa."). *See also*, fn 15, *supra*.

²⁰ *See, e.g., Jim VandeHei, Clark Speeches May Violate Election Law*, *Wash. Post*, Oct. 8, 2003, at A6.

1 DePauw University, and news accounts began appearing in early October raising the issue of
2 whether federal election laws had been violated.²¹

3 Even before General Clark's speech at the University, several Iowa law students,
4 including the complainants in this matter, began to question the University's general counsel's
5 office and Dean Hines about the legality or appropriateness of paying a presidential candidate to
6 speak on campus. *See* Complaint, at 2. Some news media reported their inquiries in the press.²²
7 According to the campaign, in view of the perceptions by some that his appearance at the Levitt
8 Lecture might be considered a campaign-related event, General Clark decided not to accept
9 payment for the speech or his travel expenses to and from the event. *See* Clark for President
10 Response, at 2. By letter dated October 24, 2003, GTN notified Dean Hines that General Clark
11 decided to refund his fee for the Levitt Lecture and would not be billing the Law School for his
12 travel expenses. *See id.*, Attachment 1. GTN enclosed a check for \$24,000²³ and never charged
13 the Law School for travel expenses. *See id.*

14 8. The Complaint and Responses

15 The complaint alleges that General Clark's visit to the Hamburg Inn constituted an
16 "illegal collateral campaign event" that caused General Clark's campus visit to become a
17 campaign rally paid for by the Law School and that General Clark "knowingly and willfully"
18 participated in the illegal collateral event. The complaint also alleges that General Clark's Levitt
19 Lecture constituted an illegal campaign speech and that the \$30,000 honorarium plus travel

²¹ *See id.*

²² *See, e.g.,* Beth Hunt, *Wesley Clark Makes First Campaign Stop*, KATV-Little Rock, Sept. 19, 2003; Renee Chou, *Wesley Clark Visits Iowa City as Paid Lecturer*, KCRG-TV- Iowa City, Sept. 20, 2003.

²³ GTN did not refund its \$6,000 booking fee.

1 expenses may have constituted an illegal campaign contribution because he criticized President
2 Bush's foreign policy decisions while boasting about his own military and foreign policy
3 successes.

4 The complaint relies heavily upon Advisory Opinion 1992-6, which involved a campus
5 visit by then-presidential candidate David Duke. In that AO, the Commission stated that Duke's
6 speech and Vanderbilt University's payment to him of an honorarium and reimbursement for
7 travel expenses would be permissible as long as he did not mention his candidacy. The
8 Commission also noted that Duke did not intend to participate in any "collateral campaign
9 events" before or after his speech and that Duke's honorarium and travel expenses would be paid
10 to him personally and not to his campaign committee.

11 In response, General Clark and the Committee argue that the Duke Advisory Opinion
12 complainants rely upon has been superseded by the promulgation of 11 C.F.R. § 110.12(b),
13 which permits federal candidates' appearances on university campuses under certain
14 circumstances. They argue that those circumstances have been met. They further argue that an
15 Advisory Opinion generally does not impose an enforceable duty on a non-requestor. Finally,
16 they point out that General Clark did not receive any payment from the University respondents
17 for his appearance.

18 Dean Hines, who responded on behalf of the University and Law School, makes two
19 principal arguments. First, he states that General Clark received no compensation or expense
20 reimbursement from the University for his appearance at the Levitt Lecture or at other campus
21 events. Second, he argues that even if General Clark had received compensation and expense
22 reimbursement, his appearance at the Levitt Lecture and participation in other lecture-related

1 activities fall within the purview of permissible campus appearances as articulated by the
2 Commission in previous Advisory Opinions. *See* AO 1992-6, AO 1990-5, and AO 1988-27.

3 The University Foundation submitted a separate response, which states that it is a
4 501(c)(3) organization that is distinct and independent of the Law School and University and that
5 its only role in the alleged activity was to release the funds from the Endowment for General
6 Clark's lecture at the direction and sole discretion of the Law School.

7 **B. Legal Analysis**

8 **1. Applicable Law**

9 The Act prohibits any person from making a contribution to any Federal candidate
10 exceeding \$2,000 for any election. 2 U.S.C. § 441a(a)(1)(A). The Act also prohibits any
11 candidate committee from knowingly accepting or receiving any contribution exceeding this
12 limitation. *See* 2 U.S.C. § 441a(f). The Act defines a contribution as "any gift, subscription,
13 loan, advance, or deposit of money or anything of value made by any person for the purpose of
14 influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Person" is defined as "an
15 individual, partnership, committee, association, corporation, labor organization, or any other
16 organization or group of persons." 2 U.S.C. § 431(11). The Commission has treated states
17 and state agencies as "persons" under the Act. *See* MUR 5135 (Texas Department of Public
18 Safety); MUR 5127 (Illinois House of Representatives); MUR 1686 (North Carolina Department
19 of Commerce).

20 "Contribution or expenditure" includes "any direct or indirect payment, distribution, loan,
21 advance, deposit, or gift of money, or any services, or anything of value." 2 U.S.C. § 441b(b)(2).
22 The term "anything of value" includes all "in-kind contributions ... the provision of any goods or

1 services without charge or at a charge that is less than the usual and normal charge for such
2 goods or services," including the use of facilities. 11 C.F.R. § 100.52(d)(1).

3 An unincorporated, tax-exempt, public educational institution may sponsor appearances
4 by candidates on its premises under certain circumstances without the sponsorship falling within
5 the Act's definition of "contribution or expenditure." See 11 C.F.R. § 110.12.²⁴ First, any such
6 institution may rent its facilities to a candidate at a "usual and normal charge." 11 C.F.R.
7 § 110.12(a). In addition, a public educational institution may offer its facilities to a federal
8 candidate at no charge or a reduced charge if:

- 9 (A) The educational institution makes reasonable efforts to ensure that the
10 appearances constitute speeches, question and answer sessions, or similar
11 communications in an academic setting, and makes reasonable efforts to
12 ensure that the appearances are not conducted as campaign rallies or
13 events; and
14
15 (B) The educational institution does not, in conjunction with the appearance,
16 expressly advocate the election or defeat of any clearly identified
17 candidate(s) or candidates of a clearly identified political party, and does
18 not favor any one candidate or political party over any other in allowing
19 such appearances.
20

21 11 C.F.R. § 110.12(b).²⁵

²⁴ 11 C.F.R. § 114.4(c)(7) creates an exception for appearances sponsored by incorporated, nonprofit educational institutions from the corporate contribution prohibition of 2 U.S.C. § 441b and mirrors the language of 11 C.F.R. § 110.12.

²⁵ The language in 11 C.F.R. § 110.12(b), adopted in 1995 and not changed by the passage of BCRA, apparently has not been the subject of any prior FEC advisory opinion or MUR. In explaining the Final Rule, the Commission said: [T]he language regarding a campaign rally atmosphere has been modified to require the educational institution to make reasonable efforts to ensure that the appearance does not turn into a campaign rally. This does not require the college or university to monitor buttons or campaign materials brought in or worn by members of the audience. ... It is not necessary to include in the final rules [] restrictions on soliciting and collecting contributions. They are already subsumed within the requirement that the educational institution make a reasonable effort to ensure the candidate appearance does not become a campaign rally.

1 Thus, because the Law School, an unincorporated public educational institution, provided
2 its facilities to General Clark at no charge, the question of whether General Clark's appearance at
3 the Levitt Lecture constituted a contribution subject to the Act's limitations at 2 U.S.C. § 441a
4 depends on (1) whether the University and Law School made reasonable efforts to ensure that the
5 appearance was conducted in an academic, non-political environment; (2) whether the University
6 or Law School expressly advocated the election of General Clark or the defeat of his opponents;
7 and (3) whether the University or Law School favored one candidate or political party over
8 another in allowing General Clark's appearance.²⁶

9 2. Analysis

10 It appears that Dean Hines made reasonable efforts to ensure that General Clark's
11 activities at the University took place in an academic setting, not as campaign rallies or events.
12 Moreover, no information has been presented suggesting that the University or Law School
13 expressly advocated the election of General Clark or defeat of his opponents or favored one
14 candidate or political party over another.

15 First, the Law School's efforts to maintain an academic environment appear to have been
16 reasonable. Specifically, Dean Hines noted that, as precautionary measures, the University

²⁶ It should be noted that 11 C.F.R. § 110.12(b) does not prohibit payment of an honorarium or reimbursement of travel expenses to a candidate. *See also* AO 1992-6; AO 1988-27. Although in the instant matter, General Clark refunded his speaker's fee and did not bill the University for travel expenses, it would appear that such payments would not have constituted a contribution when made. No information has been presented suggesting that the honorarium fell outside the scope of the conditions sets forth in 11 C.F.R. § 113.1(g)(6)(iii), which permits candidates to accept compensation for *bona fide* employment. The Law School invited General Clark to give the Levitt Lecture months before General Clark stated an intention to run for President, there is no information to suggest that the honorarium exceeded the compensation ordinarily paid to other similarly qualified public speakers, and as more fully discussed below, the Law School made reasonable efforts to ensure that General Clark's appearance at the Levitt Lecture and his candidacy did not intersect. In addition, it appears from the Committee's disclosure reports that General Clark accepted the honorarium as personal income and did not give the money to his campaign.

1 canceled the customary press conference before the Levitt Lecture, forbade the use or distribution
2 of signs and leaflets in the lecture area, reminded the audience that campaign activities were not
3 acceptable, required that written questions for General Clark be submitted before the question-
4 and-answer session to screen any campaign-related questions from the audience, and reminded
5 General Clark that the Levitt Lecture must remain academic and not turn into a campaign rally.
6 This Office concludes that the University and Law School could have reasonably relied upon
7 these precautions to avoid a campaign event atmosphere.²⁷

8 Second, there is no information to suggest that the University and Law School were
9 involved in planning, promoting or conducting the off-campus rally at the Hamburg Inn, and
10 Dean Hines denies the same. According to Dean Hines, the Hamburg Inn rally occurred before
11 General Clark's appearance on campus, and he states that he did not know about it until after it
12 had taken place. Thus, it appears that the rally was an independent event and not related to the
13 lecture and other campus events.²⁸ In any event, 11 C.F.R. § 110.12(b), which the Commission
14 promulgated after Advisory Opinion 1992-6, does not prohibit "collateral campaign events" or
15 otherwise dictate specific prohibitions regarding a candidate's activities before or after a
16 sponsored appearance.

17 Finally, the complaint does not allege, and this Office has no information to support, any
18 contention that the University respondents "expressly advocated" General Clark's election or the

²⁷ There is nothing to suggest that General Clark's speech itself created a campaign environment. Complainants claim that General Clark criticized President Bush's foreign policies, but as a military strategy and foreign policy expert speaking about "The American Leadership Role in a Changing World," it would be difficult to avoid talking about the current President or even past Presidents. See pp. 9-11, *supra*.

²⁸ In AO 1992-6 (David Duke), the Commission described "collateral campaign events" as "rallies, press conferences, luncheons, etc."

1 defeat of his opponents, or that they favored General Clark over other candidates in sponsoring
2 his appearance at the Levitt Lecture.

3 Accordingly, this Office recommends that the Commission find no reason to believe that
4 General Wesley K. Clark, Clark for President and Dorian Vanessa Weaver, as treasurer, violated
5 2 U.S.C. § 441a(f). This Office also recommends that the Commission find no reason to believe
6 that the University of Iowa College of Law, the University of Iowa, the University of Iowa
7 Foundation, or the Richard C. Levitt Family Lecture Endowment Fund violated 2 U.S.C. §
8 441a(a)(1)(A).

9 **III. RECOMMENDATIONS**


- 10 1. Find no reason to believe that General Wesley K. Clark, Clark for President and
11 Dorian Vanessa Weaver, as treasurer, violated 2 U.S.C. § 441a(f);
12
13 2. Find no reason to believe that the University of Iowa College of Law, the University
14 of Iowa, the University of Iowa Foundation, or the Richard C. Levitt Family Lecture
15 Endowment Fund violated 2 U.S.C. § 441a(a)(1)(A).
16
17 3. Approve the appropriate letters.
18
19 4. Close the file.
20


21 Lawrence H. Norton
22 General Counsel

23 Rhonda J. Vosdingh
24 Associate General Counsel
25

26
27 5/3/04
28 Date

29 BY:

30 
31 Ann Marie Terzaken
32 Assistant General Counsel

33 
34 Elena Paoli
35 Attorney